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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

MARIA G. ADDIEGO, by and through her Conservator DEBRA J. DOLCH,

Plaintiff,

v.

CITY AND COUNTY OF SAN FRANCISCO, CALIFORNIA PACIFIC MEDICAL CENTER,

Defendants
___________________________________/

No. C 05 4819 CRB

DECLARATION OF RONALD M. TORAN RE CPMC DEFENDANT'S VIOLATION OF EMTALA

Hearing: April 28, 2006
Time: 10:00 a.m.
Courtroom No. 8 - 19TH Flr.

450 Golden Gate Avenue
San Francisco CA 94102

I, RONALD M. TORAN, declare:

1. Declarant has been a member of the State Bar of California for over twenty-six (26) years and is licensed to practice law in all courts of California. Declarant makes this supplemental declaration in opposition to an award of Sec. 1988 attorneys fees in favor of City and County of San Francisco attorney CASSANDRA KNIGHT, and California Pacific Medical Center attorneys LAWRENCE A. BENNETT, STANLEY M. WESSELS, DAVIDOVITZ & BENNETT LLP. Declarant has personal knowledge of the following.

2. This morning Friday April 7, 2006, I was advised by Dyana Lew, EMTALA Operation Lead Officer for the Centers of Medicare and Medicaid Services (CMS), located at 75 Hawthorne Street, Suite 408 in San Francisco, California, that the defendant California Pacific Medical Center (CPMC) was cited for violating EMTALA for not providing necessary medical care and services in the form of "stabilizing treatment" to the plaintiff Maria Addiego on September 2, 2004, when she broke her hip at the Davies campus parking garage.

3. Ms. Lew told me that CMS contracted with the Daly City District Office of the California Department of Health Services (DHS) to conduct an extensive on site inspection of CPMC to determine if CPMC provided emergency services and care pursuant to Maria Addiego's request for help on September 2, 2004. DHS determined that CPMC did not provide stabilizing treatment and that the hospital was in violation of its Medicare Provider Agreement with the Department of Health and Human Services. As a result of DHS' findings, CMS set a preliminary termination date for the CPMC Medicare Provider Agreement on May 21, 2006, and required CPMC to revise its policies and procedures to come into compliance with its Medicare Provider Agreement.

4. Ms. Lew advised me that CPMC has submitted a preliminarily acceptable plan to revise its policies and procedures. The First Amended Complaint seeks to enjoin the CPMC policy of instructing all hospital personnel that in regard to emergency medical conditions occurring in the parking garage, even life threatening ones like heart attacks, personnel are to call CPMC Security Services Department instead of complying with Cal. Health and Safety Code §§ 1317 et. seq., and its federal counterpart the Emergency Medical Treatment and Labor Act (“EMTALA”) 42 U.S.C. §§ 1395dd. DHS will now return to CPMC to conduct a follow-up survey of the hospital facility before May 21, 2006, in order to determine if the revised policies and procedures CPMC submitted are actually in compliance with its Medicare Provider Agreement. If DHS determines as a result of its follow-up on cite survey of the hospital facility that the plan CPMC submitted to revise its policies and procedures is not acceptable, CMS will terminate CPMC’s Medicare Provider Agreement on June 5, 2006. If this happens, Ms. Lew said, the matter will be referred to the counsel for the Federal Office of the Inspector General for the imposition of monetary sanctions.

5. Ms. Lew advised that in order to obtain the official records regarding CMS’ investigation, including its findings and final determination regarding the revised policies and procedures that CPMC has submitted, a request would have to be made under the Federal Freedom of Information Act. I intend to make a FOIA request and will file the documents with this Court.

I declare under penalty of perjury and the laws of California that the foregoing is true and correct and this declaration is executed in San Francisco, California.

Dated: April 7, 2006

RONALD M. TORAN